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IN THE
COURT OF APPEALS OF INDIANA

UGUR CAMLI,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 27A04-0511-CV-682
	)	
PROGRESSIVE MEDICAL IMAGING, KEITH ROCKEY, DONALD BRUNS and MARION GENERAL RADIOLOGY, INC.,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Natalie R. Conn, Judge
Cause No. 27D03-0303-PL-87

September 6, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Ugur Camli ("Camli") appeals from the Grant Superior Court's award of summary judgment and attorney's fees in favor of Progressive Medical Imaging ("PMI"), Dr. Keith Rockey, Dr. Donald Bruns, and Marion General Radiology, Inc. ("MGR") (collectively "Defendants"). Camli raises the following issues:

I. Whether the trial court erred when it granted summary judgment in favor of Defendants; and,

II. Whether the trial court abused its discretion when it awarded attorney's fees to Defendants.

Concluding that the trial court properly entered summary judgment and awarded attorney's fees in favor of Defendants, we affirm.

Facts and Procedural History

On July 13, 2001, Camli entered into an employment agreement with MGR. The agreement provided that in exchange for compensation of $340,000, Camli would work as a radiologist for MGR for a one-year term beginning September 1, 2001. The agreement also provided that Camli would be "entitled to equal combination of vacation and continuing education to that of other employees of MGR with pay during each fiscal year that [Camli] is employed the entire fiscal year." Appellant's App. p. 22. The contract further provided that either party could terminate the agreement without cause with 120 days advance notice. MGR reserved the right to terminate the agreement immediately for several enumerated causes.

On November 19, 2001, Camli tendered his written resignation to MGR. Appellant's App. p. 52. On December 17, 2001, MGR offered Camli $10,000 in exchange for an agreement releasing MGR and its officers and shareholders, Dr. Keith

Rockey and Dr. Donald Bruns, from any liability under the employment contract. Camli refused to sign the release and continued to work for MGR through March 1, 2002.

On March 31, 2003, Camli filed a complaint in Grant Superior Court against PMI and Drs. Rockey and Bruns, alleging that he had not been paid for three days of work, specifically March 1, 2, and 3, 2002. In addition to this claim for $2833.33 in unpaid salary, Camli claimed that he had agreed to give up his vacation in exchange for $10,000, which he had not been paid. Camli also sought $100,000 in "professional damages." Appellant's App. pp. 20-21.

PMI and Drs. Rockey and Bruns filed their answer, asserting among other things that Camli's actual employer was MGR. Camli then amended his complaint to add MGR as a defendant. On May 18, 2004, the Defendants moved for summary judgment. Camli filed a response on July 2, 2004. Defendants moved to strike Camli's response as untimely. The trial court conducted a hearing on July 15, 2004, after which it entered an order striking Camli's response and granting summary judgment in favor of Defendants.

On January 28, 2005, Defendants filed a motion for attorney's fees. On February 7, 2005, the trial court granted the motion and awarded Defendants $16,460. The Defendants later moved to reduce the order granting attorney's fees to a judgment. In addition, the Defendants moved to reduce the trial court's order granting summary judgment to a final judgment, as a counter-claim brought by Defendants remained pending. The trial court conducted a hearing on all pending motions on August 12, 2005. On October 26, 2005, the trial court issued an order entering as a final judgment its prior

summary judgment order. The court also denied Camli's motion to set aside the award of attorney's fees. Camli now appeals.

Discussion and Decision

I. Summary Judgment

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C) (2003 & Supp. 2006). When reviewing a grant of summary judgment, we apply the same standard as does the trial court. Rogier v. Am. Testing & Eng'g Corp., 734 N.E.2d 606, 613 (Ind. Ct. App. 2000), trans. denied. We do not weigh the evidence; rather, we consider the facts in the light most favorable to the non-movant. Id. Neither the trial court nor the reviewing court may look beyond the evidence specifically designated to the trial court. McDonald v. Lattire, 844 N.E.2d 206, 210 (Ind. Ct. App. 2006). While the non-movant bears the burden of demonstrating that the grant of summary judgment was erroneous, we carefully assess the trial court's decision to ensure that the non-movant was not wrongly denied his or her day in court. Kennedy v. Guess, Inc. 806 N.E.2d 776, 779 (Ind. 2004).

A party seeking summary judgment bears the burden to make a prima facie showing that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law. Once the moving party satisfies this burden through evidence designated to the trial court pursuant to Trial Rule 56, the nonmoving party may not rest on its pleadings, but must designate specific facts demonstrating the existence of a genuine issue for trial. McDonald, 844 N.E.2d at 210.

With their summary judgment motion, Defendants designated evidence establishing that Camli's employment contract was with MGR, that Camli voluntarily resigned from his position, that MGR paid Camli all salary due to him under the terms of the contract, and that MGR offered Camli $10,000 in exchange for a release agreement which Camli refused. Thus, Defendants made a prima facie showing that there were no issues of material fact.

If the non-movant fails to properly respond or designate evidence within the thirty-day time period set forth in Trial Rule 56, and the moving party has shown that they are entitled to summary judgment, then summary judgment must be entered against the non-moving party. Morton v. Moss, 694 N.E.2d 1148, 1151 (Ind. Ct. App. 1998). Camli failed to respond or designate evidence pursuant to Trial Rule 56 and Defendants established that they were entitled to summary judgment as a matter of law. The trial court properly granted summary judgment in favor of Defendants.[1]

II. Attorney's Fees

Next, Camli argues that the trial court abused its discretion when it awarded Defendants attorney's fees. Indiana Code section 34-52-1-1 governs the award of

[1]Camli also contends that the trial court "erroneously assumed that by striking Camli's [untimely] response, Defendants were automatically entitled to…summary judgment." Br. of Appellant at 9. Camli directs us to nothing indicating that the trial court "automatically" granted summary judgment in favor of Defendants upon striking Camli's untimely response. See T.R. 56(C) ("Summary judgment shall not be granted as of course because the opposing party fails to offer opposing affidavits or evidence, but the court shall make its determination from the evidentiary matter designated to the court.") While the court here did grant both Defendants' motion to strike and motion for summary judgment by way of a single written order, we note that the court first conducted a hearing on summary judgment at which Camli made arguments based on his pleading and Defendants' designated evidence.

attorney's fees for litigating in bad faith or for pursuing frivolous, unreasonable, or groundless actions. It provides in relevant part:

> (b) In any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:
>
> (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
>
> (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or
>
> (3) litigated the action in bad faith.

Ind. Code § 34-52-1-1 (1999).

When we review an award of attorney's fees under Indiana Code section 34-52-1-1, we review the trial court's findings of fact under a clearly erroneous standard and review de novo the trial court's legal conclusions. Harco Inc. of Indianapolis v. Plainfield Interstate Family Dining Assocs., 758 N.E.2d 931, 941 (Ind. Ct. App. 2001). Finally, we review the trial court's decision to award attorney's fees and the amount thereof under an abuse of discretion standard. Id. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. Id. (citing Lafayette Orthopedic Clinic v. Guardianship of Bell, 670 N.E.2d 956, 957 (Ind. Ct. App. 1996)).

A claim is "frivolous" if it is made primarily to harass or maliciously injure another; if counsel is unable to make a good faith and rational argument on the merits of the action; or if counsel is unable to support the action by a good faith and rational argument for extension, modification, or reversal of existing law. Commercial Coin Laundry Sys. v. Enneking, 766 N.E.2d 433, 441 (Ind. Ct. App. 2002). A claim is "unreasonable" if, based upon the totality of the circumstances, including the law and

facts known at the time, no reasonable attorney would consider the claim justified or worthy of litigation. Id. A claim is "groundless" if no facts exist which support the claim relied upon and supported by the losing party. Id.

Here, the trial court found in its October 26, 2005 order Camli's suit was "frivolous in nature" and that:

> [Camli's] actions were with ill intent when he filed suit against PMI and Dr. Rockey and Dr. Bruns individually when he knew that his employment contract was with MGR[,] a completely separate entity. [Camli's] action of filing suit against Defendants was with ill intent when he alleged professional damages of $100,000[ ] with the knowledge that he voluntarily ended his employment and almost immediately gained new employment within his field of expertise making more money. Finally, [Camli's] action of filing suit against Defendants was with ill intent when he refused to sign a release of claim against all Defendants when MGR agreed to pay him the sum of $10,000[ ].

Appellant's App. p. 18.

The evidence supports the trial court's conclusion that Camli pursued a frivolous claim, and we cannot conclude that the trial court abused its discretion when it awarded attorney's fees to Defendants.

Conclusion

The trial court properly granted summary judgment and attorney's fees in favor of Defendants.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.